

Filed

DEC 7 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

C/RMW

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE:

NISSAN NORTH AMERICA,
INC. ODOMETER LITIGATION

MDL DOCKET NO. ____

07-3801 RMW

EXHIBITS TO MOTION OF NISSAN NORTH AMERICA, INC.
FOR TRANSFER AND CONSOLIDATION OF RELATED ACTIONS

8
DH

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE:

NISSAN NORTH AMERICA,
INC. ODOMETER LITIGATION

MDL DOCKET NO. ____

SCHEDULE OF ACTIONS

Pursuant to Rule 7.2(a)(ii) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Movant, Nissan North America, Inc., submits the following schedule of actions:

Name of Action	District Where Pending	Civil Action No.	Judge
James Selth, individually and on behalf of all others similarly situated v. Nissan North America, Inc., Nissan Motor Co. Ltd, and Does 1 through 500	Central District of California (Los Angeles)	CV07-07841-SVW	Honorable Stephen V. Wilson

Nkem Anadu, individually and on behalf of all others similarly situated v. Nissan North America, Inc., a California Corporation, and Nissan Motor Co., Ltd., a Japanese Corporation; Nissan-Infiniti LT, a Delaware business trust; Nissan Acceptance Corporation, dba Infiniti Financial Services, a California corporation	Northern District of California (San Jose)	5:07-cv-03801-RMW	Honorable Ronald Whyte
Darryl Hidalgo v. Nissan North America, Inc. and Nissan Motor Co., Ltd.	Eastern District of Michigan (Detroit)	2:07-cv-15024-ADT	Honorable Anna Diggs Taylor
Michael D. Shaffer, individually and on behalf of all others similarly situated v. Nissan North America, Inc.	Eastern District of Pennsylvania (Philadelphia)	2:07-cv-04794-PBT	Honorable Petrese B. Tucker
Rebecca Womack, Individually & On Behalf of All Other Similarly Situated v. Nissan North America, Inc. and Nissan Motor Co., Ltd.	Eastern District of Texas (Marshall)	2:06-CV-00479-DF	Honorable David Folsom

1. **REBECCA WOMACK** is an individual residing in the Eastern District of Texas.
2. **NISSAN NORTH AMERICA, INC.** is a California corporation with its principal place of business in Gardena, California. Defendant may be served through its registered agent, Lexis Nexis Documents Solution, Inc., at 701 Brazos, Suite 1050, Austin, Texas 78701.

3. **NISSAN MOTOR COMPANY, LTD.** is a Japanese corporation with its principal place of business in Tokyo, Japan. Plaintiff has requested a waiver of formal service from this Defendant.

II.

JURISDICTION & VENUE

4. This Court has jurisdiction over this cause pursuant to 28 U.S.C. § 1331 in that Plaintiff's claims arise under the laws of the United States. Jurisdiction is further proper under 28 U.S.C. § 1332 in that all parties are residents of different states and/or foreign states and the amount in controversy exceeds \$75,000.00.
5. Venue is proper in the Eastern District of Texas in that Plaintiff is a resident of the Eastern District of Texas, Plaintiff purchased the vehicle in question in the Eastern District of Texas and the conduct of which Plaintiff complains occurred wholly or in part in the Eastern District of Texas.
6. Because venue is proper in the Eastern District of Texas, Plaintiff may maintain her suit in any division of the Eastern District of Texas. *Mohamed v. Mazda Motor Corp.*, 90 F. Supp. 2d 757 (E.D. Tex. 2000).

III.

FACTUAL BACKGROUND

7. On or about May 2, 2005 in the Eastern District of Texas, **REBECCA WOMACK** purchased a 2005 year model Nissan Altima 2.5S designed, manufactured and marketed by **NISSAN NORTH AMERICA, INC.** and/or **NISSAN MOTOR COMPANY LTD.** (collectively "**NISSAN**").

8. **REBECCA WOMACK** further purchased from **NISSAN** a basic warranty against all manufacturing defects for a period of three (3) years or thirty-six thousand (36,000) miles (the "Basic Warranty").
9. **REBECCA WOMACK** also purchased warranties of varying duration on a number of components of the Altima including a Powertrain Warranty of sixty (60) months or sixty thousand (60,000) miles; a Federal Emissions Performance Warranty of two years or twenty four thousand (24,000) miles; a Federal Emission Defect Warranty of three years or thirty six thousand (36,000) miles; and a Federal Emission Long Term Defect Warranty of ninety six (96) months or eighty thousand (80,000) miles (collectively the "Component Warranties").¹
10. **NISSAN** further covenanted with **REBECCA WOMACK** that all genuine Nissan parts purchased from and installed by a Nissan dealer would be free of defects for not less than one (1) year or twelve thousand (12,000) miles (the "Parts Warranty").
11. In connection with the sale of the vehicle and its warranties, **NISSAN** impliedly represented to **REBECCA WOMACK** that the vehicle's odometer would accurately record the number of miles actually traveled by the vehicle.
12. In truth, and without **REBECCA WOMACK's** knowledge, **NISSAN** had purposefully designed the vehicle's odometer to inflate the mileage driven by the vehicle by a factor of not less than 2.0% under nominal conditions.

1

Members of the putative class residing in California, Massachusetts and Vermont also purchased a California Emission Performance Warranty and a California Emission Defect Warranty of three years or fifty thousand (50,000) miles

13. **NISSAN** achieved this over-registration by installing a computer software device in the vehicle which altered the odometer's performance by an amount which exceeds the odometer manufacturer's design tolerance. Plaintiff further alleges that **NISSAN's** adopted a uniform, biased odometer performance standard which purposefully accelerated the odometers of all **NISSAN** vehicles in the United States.
14. **REBECCA WOMACK** would show the Court that the conduct of **NISSAN** was not the result of neglect or indifference; rather it was part of a concerted effort to defraud the American consumer. **REBECCA WOMACK** specifically alleges that **NISSAN** altered the odometer of her vehicle (as well as those of the proposed class) with the intent to defraud.
15. Already, this scheme by **NISSAN** has deprived **REBECCA WOMACK** of the benefit of her bargain by shortening her warranties and diminishing the resale value of her vehicle. Unabated, **NISSAN** will deprive **REBECCA WOMACK** of more than seven hundred (700) miles of her Basic Warranty protection, and, ultimately, will shorten her Component Warranties by as much as one thousand six hundred (1,600) miles.
16. Likewise, **NISSAN** will reduce the effective period of each class member's warranties over the lifetime of their vehicles. Moreover, the inflated mileage registered by **REBECCA WOMACK's** odometer daily decreases the market value of her vehicle.
17. Finally, those class members who leased their **NISSAN** vehicles have been deprived of the full value of their leases and actually or potentially been exposed to excess mileage charges for which they rightfully bear no responsibility.

IV.

CLASS ACTION ALLEGATIONS

18. **REBECCA WOMACK** brings this action on behalf of herself and all others similarly situated. Specifically, the class **REBECCA WOMACK** seeks to represent includes

All persons and entities who/which purchased or leased a new Nissan or Infinity automobile anywhere in the United States since November 15, 2004.

The proposed class specifically excludes the United States of America, the State of Texas, counsel for the parties, the presiding United States District Court Judge, the Justices of the United States Court of Appeals for the Fifth Circuit and the United States Supreme Court, all officers and agents of Defendants and all persons related to within the third degree of consanguinity or affection to any of the foregoing individuals.

19. **REBECCA WOMACK** would show the Court that individual joinder of the members of the proposed class is patently impractical. Fed. R. Civ. P. 23(a)(1). While the exact number of class members is presently known only to **NISSAN**, **REBECCA WOMACK** alleges that the class includes hundreds of thousands of individuals and entities. The identity and location of these individuals is known only to **NISSAN** at this time. For all these reasons, individual joinder is patently impractical.

20. **REBECCA WOMACK** would further show the Court that there is a well-defined community of interest in the questions of law and fact involved that affect the parties to be represented. Fed. R. Civ. P. 23(a)(2). These common questions of law and fact predominate over questions that may affect individual class members. Such issues include, but are not limited to, the following:

- a. Whether **NISSAN** adopted a uniform odometer performance standard for all its vehicles;
 - b. Whether **NISSAN** installed a computer device to alter the performance of the odometer in violation of federal law;
 - c. Whether the odometer performance standard adopted by **NISSAN** causes errors of odometer over-registration;
 - d. Whether the installation of the computer device causes errors of odometer over-registration;
 - e. Whether such odometer over-registration was the result of **NISSAN's** intent to defraud;
 - f. The measure of actual damages;
 - g. The availability of statutory penalties; and
 - h. Attorney's fees and costs.
21. **REBECCA WOMACK** would further show the Court that her claims are typical of the claims of the class. Fed. R. Civ. P. 23(a)(3). **REBECCA WOMACK** possesses the same interests and has suffered the same injuries as the unnamed class members. She asserts identical claims and seeks identical relief on behalf of the unnamed class members. In particular, **REBECCA WOMACK** purchased a 2005 year model Nissan Altima containing an odometer which over-registers mileage. She alleges that **NISSAN** violated 49 U.S.C. § 32703 with the intent to defraud her. She seeks damages in an amount sufficient to restore to her the benefit of her bargain, statutory penalties, attorneys fees and costs.

22. **REBECCA WOMACK** would further show the Court that she will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). As evidenced by the filing of this complaint, **REBECCA WOMACK** will vigorously pursue the interests of the class. Moreover, there is no antagonism or conflict of interest between the interests of **REBECCA WOMACK** and those of the unnamed class members. Finally, **REBECCA WOMACK** has retained competent counsel to pursue the interests of the class.
23. **REBECCA WOMACK** would further show the Court that this case is maintainable as a class action under Rule 23(b)(3), Fed. R. Civ. P. In particular, **REBECCA WOMACK** would show the Court that issues of fact and law common to the class predominate over those affecting only individual members and that a class action is a superior means of resolving this dispute. Fed. R. Civ. P. 23(b)(3). The common issues of law and fact include, but are not limited to, the following:
- a. The existence of a uniform, biased odometer performance standard for all **NISSAN** vehicles;
 - b. Whether the uniform, biased odometer performance standard causes errors of odometer over-registration;
 - c. Whether **NISSAN** installation a computer device to alter the vehicle odometers in violation of the Federal Odometer Act;
 - d. Whether **NISSAN's** adoption of a uniform, biased odometer performance standard was part of a larger scheme to defraud;
 - e. Whether **NISSAN's** installation of its computer device to alter the odometer performance was part of a scheme to defraud American consumers;

- f. The measure of actual damages;
- g. The availability of statutory penalties; and
- h. Attorney's fees and costs.

24. Further, the prosecution of individual actions by hundreds of thousands of **NISSAN** owners and lessees would unduly burden the courts and the litigants. Given the relatively small cost necessary to repair or replace the defective odometer, it is unreasonable to require or expect class members to litigate their claims individually. Prosecution of this case as a class action, by contrast, conserves the resources of the parties and the courts and allows for a fair and efficient resolution of this dispute.

V.

CAUSES OF ACTION

A.

25. **REBECCA WOMACK** would show the Court that the conduct of **NISSAN** described above violates the federal prohibition of odometer tampering as set forth in 49 U.S.C. §§ 32703(1)-(2), 32710 (West 2006)(the "Act"). In particular, **REBECCA WOMACK** would show the Court that **NISSAN** has violated the Act in the following manner(s):

- a. Advertising for sale, selling, using, installing or having installed a software device which causes the odometer of all Nissan vehicles to register a mileage different from the mileage the vehicle was driven, as registered by the odometer within the designed tolerance of the manufacturer of the odometer; and/or
- b. Altering or having altered the odometer of all Nissan vehicles intending to change the mileage registered by the odometer.

26. **REBECCA WOMACK** alleges that the conduct of **NISSAN** in designing, manufacturing and marketing the vehicles with the altered odometers was committed with the intent to defraud American consumers and deprive them of the benefit of their bargain.

VI.

DAMAGES

27. For herself and on behalf of the entire class, **REBECCA WOMACK** seeks actual damages sufficient to restore to these consumers the benefit of their bargain.
28. Further, because the conduct of **NISSAN** described above was committed with the intent to defraud American consumers, **REBECCA WOMACK** would show the Court that she (and the class) are entitled to recover treble her (their) actual damages together with reasonable attorneys' fees and all costs of court. 49 U.S.C. § 32710.
29. In the event that such actual damages are less than \$500.00 (U.S.) per vehicle, **REBECCA WOMACK** seeks for herself and the class a statutory penalty of \$1,500.00 (U.S.) pursuant to 49 U.S.C. § 32710 for each such vehicle delivered in this country in the last two years.

WHEREFORE, PREMISES CONSIDERED, REBECCA WOMACK individually and as representative of the Plaintiff class, respectfully prays that upon final trial of this cause, she obtain Judgment as follows:

1. Certifying this case as a class action and appointing **REBECCA WOMACK** and her Counsel to represent the interests of the class;
2. Adjudging that **NISSAN** violated the federal prohibition of odometer tampering and that it did so with the intent to defraud American consumers;

3. Awarding **REBECCA WOMACK** (and the class) her (their) actual damages in an amount sufficient to restore to her (them) the benefit of her (their) bargain;
4. Awarding **REBECCA WOMACK** (and the class) treble her (their) actual damages or not less than \$1,500.00 (U.S.) for each class vehicle delivered in this country in the last two years;
5. Awarding **REBECCA WOMACK** (and the class) her (their) reasonable attorneys' fees incurred at trial and, if necessary, on appeal;
6. Taxing all costs of Court and the expenses of maintaining this suit (including class member notification expenses) against **NISSAN**; and
7. Awarding **REBECCA WOMACK** (and the class) all pre-judgment and post-judgment interest as may be allowed under law at the highest respective lawful rates.

REBECCA WOMACK further prays for all other relief to which she or the class may be justly entitled.

Respectfully submitted,

/s/

James A. Holmes (Attorney in Charge)
Texas Bar No. 00784290

THE LAW OFFICE OF JAMES HOLMES, P.C.

635 SOUTH MAIN, SUITE 203
HENDERSON, TX 75654
(903) 657-2800
(903) 657-2855 (fax)
jh@jamesholmeslaw.com

OF COUNSEL:

R. Stephen Woodfin
Texas Bar No. 21930400

LAW OFFICE OF STEPHEN WOODFIN

1012 HOUSTON
KILGORE, TEXAS 75663
(903) 984-0518
(903) 984-2574 (fax)
stephenwoodfin@sydcom.net

Jay Kutchka
Arkansas Bar No. 96010

JONES, JACKSON & MOLL, P.L.C.

401 NORTH 7TH STREET
FORT SMITH, ARKANSAS 72902-2023
(479) 782-7203
(479) 782-9460 (fax)
jkutchka@jjmlaw.com

David B. Miller
Texas Bar No. 00788057

LAW OFFICE OF DAVID B. MILLER.

4350 BELTWAY DRIVE
ADDISON, TEXAS 75001
(972) 991-2222
(972) 386-0091
David@schneidlaw.com

ATTORNEYS FOR THE PLAINTIFF CLASS

1 AMAMGBO & ASSOCIATES
2 DONALD AMAMGBO, ESQ.
3 7901 Oakport Street, Suite 4900
4 Oakland, California 94621
Telephone: (510) 615-6000
Facsimile: (510) 615-6025

5 REGINALD TERRELL, ESQ.
6 THE TERRELL LAW GROUP
7 223 25th Street
8 Richmond, California 94804
Telephone: (510) 237-9700
Facsimile: (510) 237-4616

9 LAW OFFICES OF NWAJEI & COMPANY
10 Lawrence D. Nwajei
11 4221 Wilshire Blvd., Suite 392
12 Los Angeles, CA 90010
Telephone: 323-549-0201
Facsimile: 323-549-0211

13 Attorneys for Plaintiff

14
15 UNITED STATES DISTRICT COURT

16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17
18 NKEM ANADU, individually and on behalf of
all others similarly situated,

19 Plaintiff,

20 v.

21 NISSAN NORTH AMERICA, INC.,
22 a California corporation, and
23 NISSAN MOTOR CO., LTD.,
a Japanese corporation; NISSAN-INFINITI LT,
24 a Delaware business trust; NISSAN
ACCEPTANCE CORPORATION,
25 dba INFINITI FINANCIAL SERVICES
26 a California corporation,

27 Defendants.
28

ORIGINAL
FILED

JUL 25 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

E-filing

ADR
RMW
RS

Case No.: 007-03801

CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF

[JURY TRIAL DEMANDED]

1 Come Plaintiff NKEM ANADU, individually and on behalf of all others similarly
2 situated Plaintiff, by counsel, and file her Class Action Complaint, and in support thereof, would
3 respectfully show unto the court as follows:

4 **I. Parties**

- 5 1. Plaintiff Nkem Anadu resides in the Northern District of California.
- 6 2. Defendants Nissan North America, Inc. and Nissan Acceptance Corporation
7 are California corporations with their principal place of business in Gardena, California, and may be
8 served through their registered agent, Lexis Nexis Document Solutions, Inc., 421 West Main Street,
9 Frankfort, California 40601.
- 10 3. Defendant Nissan Motor Company, Ltd. is a Japanese corporation with its
11 principal place of business in Tokyo, Japan. Plaintiff is requesting a waiver of formal service from
12 Defendant pursuant to Fed. R. Civ. P. 4(d).

- 13 4. Defendant Nissan-Infiniti LT is a Delaware business trust.

14 **II. Jurisdiction and Venue**

- 15 5. This court has jurisdiction over this cause pursuant to 28 U.S.C. § 1331 in
16 that Plaintiff claims arise under the laws of the United States. Jurisdiction is further proper under
17 28 U.S.C. 1332 in that all parties herein are residents of different states and/or foreign states and
18 the amount in controversy exceeds \$75,000.

- 19 6. Venue is proper in the Northern District of California in that Plaintiff is
20 residents of the Northern District of California and the conduct Plaintiff complains occurred wholly
21 or in part in the Northern District of California,

- 22 7. Because venue is proper in the Northern District of California, Plaintiff may
23 maintain her suit in any division of the Northern District of California.

24 **III. Factual Background**

- 25 8. Defendant Nissan Motor Co., Ltd. and/or Defendant Nissan North America,
26 Inc. design, manufacture, market, sell, lease and distribute motor vehicles to consumer and business
27 customers in the United States and in the Northern District of California, under the brand names
28 "Nissan" and "Infiniti" (hereinafter collectively called "Nissan").

1 9. Defendant Nissan Acceptance Corporation, which also does business as
2 Infiniti Financial Services, and Defendant Nissan-Infiniti LT, lease and finance motor vehicles sold
3 and leased by Defendant Nissan Motor Co., Ltd. and/or Defendant Nissan North America, Inc. in
4 the United States and in the Northern District of California.

5 10. It is Plaintiff's belief that Defendant Nissan Acceptance Corporation, which
6 also does business as Infiniti Financial Services, and Defendant Nissan-Infiniti LT are instruments
7 of, divisions of, affiliates of, or subsidiaries of Defendant Nissan Motor Co., Ltd., and/or Defendant
8 Nissan North America, Inc.

9 11. Plaintiff Nkem Anadu purchased a Nissan Altima.

10 12. As part of the bases of the bargains, Plaintiff acquired from Nissan basic
11 warranties against all manufacturing defects for a period of three (3) years or thirty-six thousand
12 (36,000) miles (the "Basic Warranty").

13 13. Defendant Nissan Motor Co., Ltd., and/or Defendant Nissan North America,
14 Inc. covenanted with Plaintiff that all genuine Nissan parts purchased from and installed by a
15 Nissan or Infiniti dealer would be free of defects for not less than one (1) year or twelve thousand
16 (12,000) miles (the "Parts Warranty").

17 14. In connection with the sale of the vehicles and their warranties, Defendant
18 Nissan Motor Co., Ltd., and/or Defendant Nissan North America, Inc. impliedly represented to
19 Plaintiff that the vehicles' odometer would accurately record the number of miles actually traveled
20 by the vehicle.

21 15. In truth, and without the knowledge of Plaintiff, Defendant Nissan Motor
22 Co., Ltd., and/or Defendant Nissan North America, Inc. had purposefully designed the vehicle's
23 odometers to inflate the mileage driven by the vehicles by a factor of not less than two percent (2%)
24 under normal conditions.

25 16. Defendant Nissan Motor Co., Ltd. and/or Defendant Nissan North America,
26 Inc. achieved this over-registration by installing a computer software device in the vehicles, which
27 altered the odometers' performance by an amount, which exceeds the odometer manufacturer's
28 design tolerance. Plaintiff further allege that Nissan adopted a uniform, biased odometer

1 performances standard, which purposefully accelerated the odometers of all Nissan vehicles in the
2 United States.

3 17. Plaintiff would show the court that the conduct of Nissan was not the result
4 of neglect or indifference; rather it was part of a concerted effort to defraud the American consumer.
5 Plaintiff specifically allege that Defendant Nissan Motor Co., Ltd., and/or Defendant Nissan North
6 America, Inc. altered the odometers of their vehicles (as well as those of the proposed class) with
7 the intent to defraud.

8 18. Already, this scheme by Defendants have deprived Plaintiff of the benefit of
9 their bargains by shortening their warranties and diminishing the resale value of their vehicles.
10 Unabated, Defendant Nissan Motor Co., Ltd., and/or Defendant Nissan North America, Inc. will
11 deprive Plaintiff of more than seven hundred (700) miles of their Basic Warranty protection, and,
12 ultimately, will shorten their Component Warranties by as much as one thousand six hundred
13 (1,600) miles.

14 19. Likewise, Nissan will reduce the effective period of each class member's
15 warranties over the lifetime of their vehicles. Moreover, the inflated mileage registered by the
16 odometers of Plaintiff daily decreases the market value of their vehicles.

17 20. Defendant Nissan Acceptance Corporation, which also does business as
18 Infiniti Financial Services, and Defendant Nissan-Infiniti Lt stood to gain, and did gain, by virtue of
19 the acts of its affiliated, parent or subsidiary companies, Defendants Nissan North America, Inc. and
20 Nissan Acceptance Corporation, in that they have collected and will collect excess mileage charges
21 over and above the depreciation attributable to those excess mileage charges for which they
22 rightfully bear no responsibility.

23 **IV. Class Action Allegations**

24 21. Plaintiff bring this action on behalf of themselves and all others similarly
25 situated. Specifically, the class Plaintiff seek to represent includes:

26 all persons and entities who/which purchased or leased a
27 new Nissan or Infiniti automobile anywhere in the United
28 States since November 15, 2004.

1 Unbated, Defendant Nissan Motor Co., Ltd., and/or Defendant Nissan North America, Inc. will
2 deprive Plaintiffs of more than seven hundred (700) miles of their Basic Warranty protection, and,
3 ultimately, will shorten their Component Warranties by as much as one thousand six hundred
4 (1,600) miles.

5 23. Likewise, Nissan will reduce the effective period of each class member's
6 warranties over the lifetime of their vehicles. Moreover, the inflated mileage registered by the
7 odometers of Plaintiffs daily decreases the market value of their vehicles.

8 24. Defendant Nissan Acceptance Corporation, which also does business as
9 Infiniti Financial Services, and Defendant Nissan-Infiniti Lt stood to gain, and did gain, by virtue of
10 the acts of its affiliated, parent or subsidiary companies, Defendants Nissan North America, Inc. and
11 Nissan Acceptance Corporation, in that they have collected and will collect excess mileage charges
12 over and above the depreciation attributable to those excess mileage charges for which they
13 rightfully bear no responsibility.

14 IV. Class Action Allegations

15 25. Plaintiffs bring this action on behalf of themselves and all others similarly
16 situated. Specifically, the class Plaintiffs seek to represent includes:

17 all persons and entities who/which purchased or leased a
18 new Nissan or Infiniti automobile anywhere in the United
19 States since November 15, 2004.

20 The proposed class specifically excludes the United States of America, the
21 Commonwealth of California, counsel for the parties, the presiding United States District Court
22 Judge, the Justices of the United States Court of Appeals for the Sixth Circuit and the United States
23 Supreme Court, all officers and agents of Defendants, and all persons related to within the third
24 degree of consanguinity or affection to any of the foregoing individuals.

25 26. Plaintiffs would show the Court that individual joinder of the members of the
26 proposed class is patently impractical. Fed. R. Civ. P. 23(a)(1). While the exact number of class
27 members is presently known only to Defendants, Plaintiffs allege that the class includes hundreds of
28 thousands of individuals and entities. The identity and location of these individuals is known only
to Defendants at this time. For all these reasons, individual joinder is patently impractical.

1 27. Plaintiffs would further show the Court that there is a well-defined
2 community of interest in the questions of law and fact involved that affect the parties to be
3 represented. Fed. R. Civ. P. 23(a)(2). These common questions of law and fact predominate over
4 questions that may affect individual class members. Such issues include, but are not limited to, the
5 following:

- 6 a. Whether Defendants Nissan Motor Co., Ltd. and/or Nissan North
7 America, Inc. adopted a uniform odometer performance standard for
8 all its vehicles;
9 b. Whether Defendants Nissan Motor Co., Ltd. and/or Nissan North
10 America, Inc. installed a computer device to alter the performance of
11 the odometer in violation of federal law;
12 c. Whether the odometer performances standard adopted by Defendants
13 Nissan Motor Co., Ltd. and/or Nissan North America, Inc. causes
14 errors of odometer over-registration;
15 d. Whether the installation of the computer device causes errors of
16 odometer over-registration;
17 e. Whether such odometer over-registration was the result of Defendants
18 Nissan Motor Co., Ltd. and/or Nissan North America, Inc.'s intent to
19 defraud;
20 f. The measure of actual damages;
21 g. The availability of statutory penalties; and
22 h. Attorney's fees and costs.

23 28. Plaintiffs would further show the Court that their claims are typical of the
24 claims of the class. Fed. R. Civ. P. 23(a)(3). Plaintiffs possess the same interests and have suffered
25 the same injuries as the unnamed class members. They assert identical claims and seek identical
26 relief on behalf of the unnamed class members. In particular, Plaintiffs purchased or leased Nissans
27 containing an odometer which over-registers mileage, they allege that Nissan violated 49 U.S.C. §
28

1 32703 with the intent to defraud them, and they seek damages in an amount sufficient to restore to
2 them the benefit of their bargains, statutory penalties, attorneys' fees, and costs.

3 29. Plaintiffs will vigorously pursue the interests of the class. Moreover, there is
4 no antagonism or conflict of interest between the interests of Plaintiffs. Plaintiffs have retained
5 competent counsel to pursue the interests of the class.

6 30. Plaintiffs would further show the Court that this case is maintainable as a
7 class action under Rule 23(b)(3), Fed. R. Civ. P. In particular, Plaintiffs would show the Court that
8 issues of fact and law common to the class predominate over those affecting only individual
9 members and that a class action is a superior means of resolving this dispute. Fed. R. Civ. P.
10 23(b)(3). The common issues of law and fact include, but are not limited to, the following:

- 11 a. The existence of uniform, biased odometer performance standard for
12 all Nissan vehicles;
- 13 b. Whether the uniform, biased odometer performances standard causes
14 of errors of odometer over-registration;
- 15 c. Whether Defendants Nissan North America, Inc. and Nissan Motor
16 Co., Ltd. installed a computer device to alter the vehicle odometers in
17 violation of the Federal Odometer Act;
- 18 d. Whether Defendants Nissan North America, Inc. and Nissan Motor
19 Co., Ltd's adoption of a uniform, biased odometer performance
20 standard was part of a larger scheme to defraud;
- 21 e. Whether Defendants Nissan North America, Inc. and Nissan Motor
22 Co., Ltd's installation of its computer device to alter the odometer
23 performance was part of a scheme to defraud American consumers;
- 24 f. Whether Defendants Nissan-Infiniti LT and/o Nissan Acceptance
25 Corporation have been unjustly enriched or have conspired with the
26 other Defendants to defraud American consumers;
- 27 g. The measure of actual damages;
- 28 h. The availability of statutory penalties; and

1 i. Attorneys' fees and costs.

2 31. Further, the prosecution of individual actions by hundreds of thousands of
3 Nissan owners and lessees would unduly burden the courts and the litigants. Given the relatively
4 small cost necessary to repair or replace the defective odometer, it is unreasonable to require or
5 expect class members to litigate their claims individually. Prosecution of this case as a class action,
6 by contrast, conserves the resources of the parties and the courts that allow for a fair and efficient
7 resolution of this dispute.

8 **V. Causes of Action**

9 **FIRST CAUSE OF ACTION**

10 32. The conduct of Defendants Nissan North America, Inc. and Nissan Motor
11 Co., Ltd. described above violates the federal prohibition of odometer tampering as set forth in 49
12 U.S.C. §§ 32703(1)-(2), 32710 (West 2006) (the "Act"). In particular, Plaintiffs would show the
13 Court that Nissan has violated the Act in the following manner(s):

- 14 a. Advertising for sale, selling, using, installing or having installed a
15 software device which causes the odometer of all Nissan vehicles to
16 register a mileage different from the mileage the vehicle was driven,
17 as registered by the odometer within the designed tolerance of the
18 manufacturer of the odometer; and/or
19 b. Altering or having altered the odometer of all Nissan vehicles
20 intending to change the mileage registered by the odometer.

21 33. The conduct of Defendants Nissan North America, Inc. and Nissan Motor
22 Co., Ltd., in designing, manufacturing and marketing the vehicles with altered odometers was
23 committed with the intent to defraud American consumers and deprive them of the benefit of their
24 bargain.

25 34. The conduct of Defendants Nissan-Infiniti LT and Nissan Acceptance
26 Corporation, in financing and leasing Nissan motor vehicles with the altered odometers was
27 committed with the intent to defraud American consumers and deprive them of the benefit of their
28 bargain.

SECOND CAUSE OF ACTION

(Violation of Bus. & Prof. Code § 17200)
(Against all Defendants)

35. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

36. The acts and practices of defendant as alleged herein constitute unlawful, unfair, and fraudulent business acts and practices within the meaning of California Business & Professions Code § 17200, *et seq.*

37. Defendants have engaged in "unlawful" business acts and practices by violating Bus. & Prof. Code § 17500, *et seq.*

38. Plaintiff reserves the right to allege other violations of law which constitute unlawful acts or practices. Such conduct is ongoing and continues to this date.

39. Defendants have also engaged in a "fraudulent" business act or practice in the representations and omissions described herein are false and/or likely to deceive potential and current customers.

40. Defendants have also engaged in "unfair" business acts or practices in the harm caused by defendants' conduct outweighs any utility of such conduct and such conduct, offends public policy, is immoral, unscrupulous, unethical, deceitful and offensive, and causes substantial injury to consumers.

41. The aforementioned unlawful, fraudulent, and unfair business acts or practices conducted by defendants continue to this day. Defendants have failed to publicly acknowledge the wrongful nature of their actions and have not corrected the advertisements.

42. As a direct and proximate result of these acts, consumers have been and are being harmed. Plaintiff brings this action pursuant to Sections 17203 and 17204 for injunctive relief to enjoin the practices described herein.

1 52. For Plaintiffs, and on behalf of the entire class, said Plaintiffs seek actual damages
2 sufficient to restore to these consumers the benefit of their bargain.

3 53. Further, because the conduct of Defendants described above was committed with the
4 intent to defraud American consumers, Plaintiffs would show the Court that they (and the class) are
5 entitled to recover treble their actual damages together with reasonable attorneys' fees and all costs
6 of court. 49 U.S.C. § 32710.

7 54. In the event that such actual damages are less than \$500 (U.S.) per vehicle, Plaintiffs
8 seek for themselves and the class a statutory penalty of \$1,500 (U.S.) pursuant to 49 U.S.C. § 32710
9 for each such vehicle delivered in this country in the last two (2) years.

10 WHEREFORE, PREMISES CONSIDERED, Plaintiffs, individually and as
11 representatives of the Plaintiff class, respectfully pray that upon final trial of this cause, they each
12 obtain judgment as follows:

13 1. Certifying this case as a class action and appointing Plaintiff and their
14 counsel to represent the interests of the class;

15 2. Adjudging that Defendants Nissan Motor Co., Ltd. and/or Nissan North
16 America, Inc. violated the federal prohibition of odometer tampering and that they did so with the
17 intent to defraud American consumers;

18 3. Adjudging that Defendants Nissan-Infiniti LT. and/or Nissan Acceptance
19 Corporation have been unjustly enriched and have conspired with the other Defendants to defraud
20 American consumers to product profits that should be ordered disgorged.

21 4. Awarding Plaintiffs (and the class) their actual damages in an amount
22 sufficient to restore to them the benefit of their bargain;

23 5. Awarding Plaintiffs treble their actual damages or not less than \$1,500 (U.S.)
24 for each class vehicle delivered in this country in the last two years;

25 6. Awarding Plaintiffs (and the class) their reasonable attorneys' fees incurred
26 at trial and, if necessary, on appeal.

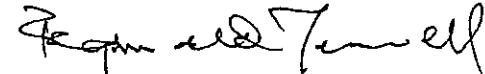
27 7. Taxing all costs of Court and the expenses of maintaining this suit (including
28 class member notification expenses) against Defendants, jointly and severally;

1 8. Awarding Plaintiffs (and the class) all prejudgment and postjudgment interest
2 as may be allowed under law at the highest respective lawful rates;

3 9. Trial by jury on all issues so triable; and

4 10. All other relief to which Plaintiffs (and the class) may be justly entitled.

5
6 Dated: July 25, 2007



DONALD AMAMGBO, ESQ.
AMAMGBO & ASSOCIATES
7901 Oakport Street, Suite 4900
Oakland, California 94621
Telephone: (510) 615-6000
Facsimile: (510) 615-6025

REGINALD TERRELL, ESQ.
THE TERRELL LAW GROUP
223 25th Street
Richmond, California 94804
Telephone: (510) 237-9700
Facsimile: (510) 237-4616

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL D. SHAFFER, Individually and on Behalf of All Others Similarly Situated,	:	Civil Action No.:
	:	
Plaintiff,	:	CLASS ACTION
	:	
v.	:	
	:	
NISSAN NORTH AMERICA, INC.,	:	
	:	
Defendant.	:	

CLASS ACTION COMPLAINT

Plaintiff, Michael D. Shaffer ("Shaffer" or "Plaintiff"), brings this class action lawsuit against Defendant, Nissan North American, Inc. ("Nissan" or "Defendant") on behalf of himself and all others similarly situated, upon information and belief except as to paragraphs 4, 8 and 9, and avers as follows:

SUMMARY OF CLAIMS

1. This class action lawsuit alleges violations of the federal statute prohibiting odometer tampering, 49 U.S.C. §§ 32702 *et seq.* (the "Act"), and a common law claim for unjust enrichment.

2. Plaintiff is a member and proposed representative of a class of consumers in the United States who purchased or leased automobiles manufactured and sold by Defendant. Plaintiff seeks to redress the injuries Defendant caused to the Class through a common and continuing pattern of purposely designing and setting the vehicle's odometer to inflate the mileage driven by the vehicle by a factor of not less than 2.0% under nominal conditions, and

using computer software to alter the odometer performance so that the odometer registers more mileage than was traveled.

3. Defendant's improper manufacturing and setting of odometers caused damages to Plaintiff and Class members including shortening the warranty and lease contracts, and thus increasing Plaintiff's expenses for repairs and costs for mileage penalties, as well as diminishing the value of the automobiles.

PARTIES

4. Michael Shaffer is an individual residing in Bala Cynwyd, Pennsylvania.

5. Nissan North America, Inc. is a California corporation with its headquarters and principal place of business in Nashville, Tennessee.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this cause pursuant to 28 U.S.C. § 1331 in that Plaintiff's claims arise under the laws of the United States.

7. Venue is proper in the Eastern District of Pennsylvania in that Plaintiff is a resident of the Eastern District of Pennsylvania, Plaintiff purchased the vehicle in question in this district, and the conduct of which Plaintiff complains occurred wholly or in part in this district.

FACTUAL BACKGROUND

8. On or about July, 2007 in the Eastern District of Pennsylvania, Michael Shaffer leased a 2007 model year Nissan Quest 3.5SE designed, manufactured and marketed by Nissan North America, Inc.

9. Mr. Shaffer further purchased from Nissan a written warranty, the basic warranty

against all manufacturing defects for a period of three (3) years or thirty-six thousand (36,000) miles (the "Basic Warranty").

10. Nissan also provided various warranties of varying duration on a number of components of the Quest, including for example, a Powertrain Warranty of sixty (60) months or sixty thousand (60,000) miles; a Federal Emissions Performance Warranty of two (2) years or twenty four thousand (24,000) miles; a Federal Emission Defect Warranty of three (3) years or thirty six thousand (36,000) miles; and a Federal Emission Long Term Defect Warranty of ninety six (96) months or eighty thousand (80,000) miles (collectively the "Component Warranties").

11. Nissan also covenanted that all genuine Nissan parts purchased from and installed by a Nissan dealer would be free of defects for not less than one (1) year or twelve thousand (12,000) miles (the "Parts Warranty").

12. The odometer is a system in all vehicles that measures the distance the vehicle travels, in either kilometers or miles, on an analog or digital counter. Modern odometers are based on a formula programmed by the vehicle or instrument manufacturer. The accuracy of the odometer is affected by how the manufacturer programs the odometer.

13. There are no governmental regulations concerning odometer accuracy, and the only industry standard is a voluntary one by the Society of Automotive Engineers that suggest odometers should be within +/- .4%, or no more than 4 miles high or low in every 100 miles. However, consumers expect that their odometers will be wholly accurate.

14. Manufacturers are able to set their odometers to be wholly accurate. Earlier this year, Honda tightened its odometer accuracy and centered the odometer on 0%, beginning with 2007 models. It has also been reported that, when faced with complaints of odometer readings

5% higher than the actual miles traveled, in January 2000, Porsche released a new calibration that made its odometers accurate.

15. According to an April 2002 NHTSA Report Number DOT HS 809 441, *Preliminary Report: The Incidence Rate of Odometer Fraud*, there is a significant price paid by consumers for inaccurate odometers, as a vehicle's odometer reading is a key indicator of the condition, and therefore, the value, of the vehicle.

16. In connection with the sale of the vehicle and its warranties, Nissan impliedly represented to Mr. Shaffer that the vehicle's odometer would accurately record the number of miles actually traveled by the vehicle.

17. In truth, and without Mr. Shaffer's knowledge, Nissan had purposefully designed the vehicle's odometer to inflate the mileage driven by the vehicle by a factor of not less than 2.0% under nominal conditions.

18. Nissan achieved this over-registration by using a computer software device in the vehicle that altered the odometer's performance by an amount which exceeds the odometer manufacturer's design tolerance. Nissan also adopted a uniform, biased odometer performance standard which purposefully accelerated the odometers of Nissan vehicles in the United States.

19. The conduct of Nissan was not the result of neglect or indifference. Rather, it was part of a concerted plan, as Nissan altered the odometer of Plaintiff's vehicle (as well as those of the proposed Class) with the intent to defraud the American consumer.

20. Already, this scheme by Nissan has deprived Plaintiff of the benefit of his bargain by shortening his warranties and diminishing the resale value of his vehicle. Unabated, Nissan will deprive Plaintiff of more than five hundred (500) miles of his Basic Warranty

protection.

21. Nissan will likewise reduce the effective period of each Class member's warranties over the lifetime of their vehicles.

22. In addition, Plaintiff and those Class members who leased their Nissan vehicles have been deprived of the full value of their leases and actually or potentially been exposed to excess mileage charges and increased maintenance and repair costs for which they rightfully bear no responsibility.

23. Finally, the inflated mileage registered by Plaintiff's odometer daily decreases the market value of his vehicle.

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action on behalf of himself and all others similarly situated.

Specifically, the Class Plaintiff seeks to represent includes:

All persons and entities who/which purchased or leased a new Nissan automobile anywhere in the United States since November 15, 2004.

The proposed Class specifically excludes counsel for the parties, the presiding United States District Court Judge, the Justices of the United States Court of Appeals for the Third Circuit and the United States Supreme Court, all officers and agents of Defendant.

25. Individual joinder of the members of the proposed Class is impractical. While the exact number of Class members is presently known only to Nissan, Plaintiff alleges that the Class includes hundreds of thousands of individuals and entities. The identity and location of these individuals is known only to Nissan at this time. For all these reasons, individual joinder is patently impracticable.

26. There is a well-defined community of interest in the questions of law and fact involved that affect the parties to be represented. These common questions of law and fact predominate over questions that may affect individual Class members. Such issues include, but are not limited to, the following:

- a. Whether Nissan adopted a uniform odometer performance standard for all its vehicles;
- b. Whether the odometer performance standard adopted by Nissan causes errors of odometer over-registration;
- c. Whether Nissan's installation of the computer device causes errors of odometer over-registration;
- d. Whether odometer over-registration was the result of Nissan's intent to defraud;
- e. The measure of actual damages;
- f. The availability of statutory penalties; and
- g. Attorney's fees and costs.

27. Plaintiff's claims are typical of the claims of the Class. Plaintiff possesses the same interests and has suffered the same injuries as the unnamed Class members. He asserts identical claims and seeks identical relief on behalf of the unnamed Class members. In particular, Plaintiff purchased a 2007 model year Nissan Quest containing an odometer which over-registers mileage. He alleges that Nissan violated 49 U.S.C. § 32703 with the intent to defraud him. He seeks damages in an amount sufficient to restore to him the benefit of his bargain, as well as statutory penalties, attorneys' fees and costs.

28. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff will vigorously pursue the interests of the Class. Moreover, there is no antagonism or conflict of

interest between the interests of Plaintiff and those of the unnamed Class members. Finally, Plaintiff has retained competent counsel to pursue the interests of the Class.

29. This case is maintainable as a class action under Rule 23(b)(3), Fed. R. Civ. P. In particular, the issues of fact and law identified above that are common to the Class predominate over those affecting only individual members, and a class action is a superior means of resolving this dispute. After determination of the predominant common issues identified above, if necessary or appropriate, the Class can be divided into logical and manageable subclasses.

30. Defendant has acted, and refused to act, on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole and in the absence of a class action, Defendant would be unjustly enriched because it would be able to retain the benefits and fruits of its wrongful conduct.

31. Further, the prosecution of individual actions by hundreds of thousands of Nissan owners and lessees would unduly burden the courts and the litigants. Given the relatively small cost necessary to repair or replace the defective odometer, it is unreasonable to require or expect Class members to litigate their claims individually. Prosecution of this case as a class action, by contrast, conserves the resources of the parties and the courts and allows for a fair and efficient resolution of this dispute.

32. Any applicable statutes of limitation have been tolled by Defendant's continuing, knowing and active concealment of the facts alleged herein. Plaintiff and members of the Class have been kept in ignorance of vital information essential to the pursuit of these claims without any fault or lack of diligence on their part. Because Defendant is and was in exclusive possession of the facts and information concerning the true character, quality and nature of its

odometers, Defendant should be estopped from relying on any statutes of limitation.

CAUSES OF ACTION

COUNT I

(Violation of 49 U.S.C. §§ 32703(1)-(2); 32710)

33. The preceding allegations are incorporated herein by reference.

34. Nissan's wrongful acts and practices, as described above, violate the federal statute prohibiting odometer tampering, 49 U.S.C. §§ 32703(1)-(2); 32710, by Nissan's conduct in, *inter alia*:

- a. Selling, using, installing and/or having installed a software device that causes the odometers of Nissan vehicles to register a mileage greater than the mileage actually traveled by the vehicle, as registered by the odometer within the designed tolerance of the odometer manufacturer; and/or
- b. Altering or having altered the odometer of Nissan vehicles intending to change the mileage registered by the odometer.

35. Nissan's wrongful conduct of designing, manufacturing, marketing, financing, selling and/or leasing vehicles with altered odometers was engaged in with the intent to defraud American consumers and deprive them of the benefits of their bargains. Nissan's wrongful conduct violates (and continues to violate) 49 U.S.C. §§ 32703(1)-(2); 32710.

36. As a direct and/or proximate result of Nissan's wrongful conduct, Plaintiff and the Class members have sustained (and will continue to sustain) actual and/or consequential damages in the form of (i) the lost benefit of their bargain, (ii) monetary losses for maintenance incurred due to the improper odometer readings, (iii) repairs that should have been covered by their warranties, (iv) monetary losses for excess mileage charges paid under their leases, and/or (v) the diminution in value of their vehicles. All of the damages sustained by Plaintiff and the Class were reasonably foreseeable by Nissan.

37. In the event such damages are less than \$500 per vehicle, Plaintiff on behalf of himself and the Class members, seeks statutory penalties of \$1,500 per Nissan vehicle delivered in this country, pursuant to 49 U.S.C. § 32710.

38. Further, because the conduct of Nissan described above was committed with the intent to defraud American consumers, Plaintiff and the Class are entitled to recover treble his (their) actual damages together with reasonable attorneys' fees and all costs. *See* 49 U.S.C. § 32710.

COUNT II

UNJUST ENRICHMENT/RESTITUTION

39. The preceding allegations are incorporated herein by reference.

40. Nissan has been (and will continue to be) unjustly enriched by virtue of its wrongful acts and practices (*i.e.*, reduced warranty repair costs and excess lease mileage charges), to the financial detriment of Plaintiff and the Class members.

41. Nissan's acceptance and retention of these benefits under the above-stated circumstances would be inequitable.

42. Nissan should be required to disgorge all amounts by which it has been unjustly enriched by its wrongful acts and practices.

WHEREFORE, Plaintiff individually and as representative of the Class, respectfully prays for judgment against Defendant as follows:

1. Certifying this case as a class action and appointing Michael Shaffer and his Counsel to represent the interests of the Class;
2. Adjudging that Nissan violated the federal prohibition of odometer tampering and

that it did so with the intent to defraud American consumers;

3. Awarding Plaintiff (and the Class) his (their) actual damages in an amount sufficient to restore to him (them) the benefit of his (their) bargain;
4. Awarding Plaintiff (and the Class) treble his (their) actual damages or not less than \$1,500.00 (U.S.) for each Class member's vehicle delivered in this country in the last two years;
5. Awarding Plaintiff (and the Class) his (their) reasonable attorneys' fees incurred at trial and, if necessary, on appeal;
6. Taxing all costs of Court and the expenses of maintaining this suit (including Class member notification expenses) against Defendant;
7. Awarding Plaintiff (and the Class) all pre-judgment and post-judgment interest as may be allowed under law at the highest respective lawful rates; and
8. For all other relief as the Court may deem necessary and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: November 13, 2007

SHEPHERD, FINKELMAN, MILLER
& SHAH, LLC

By: 

Scott R. Shepherd

Natalie Finkelman Bennett

35 E. State Street

Media, PA 19063

Telephone: 610/891-9880

Facsimile: 610/891-9883

Email: sshepherd@sfmslaw.com

nfinkelman@sfmslaw.com

Counsel for Plaintiff and the Class

Receipt Number

564539

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

DARRYL HIDALGO,

Plaintiff,

v.

NISSAN NORTH AMERICA, INC. and
NISSAN MOTOR CO., LTD.,

Defendants.

Case: 2:07-cv-15024
Judge: Taylor, Anna Diggs
Referral MJ: Morgan, Virginia M
Filed: 11-27-2007 At 10:59 AM
CMP HIDALGO V. NISSAN NA, INC (DA)

CLASS ACTION COMPLAINT

Plaintiff Darryl Hidalgo ("Plaintiff"), individually and on behalf of a class of similarly situated persons, brings this class action suit against Nissan North America, Inc. and Nissan Motor Co., Ltd. (collectively, "Nissan"). Plaintiff makes the following allegations:

PARTIES

1. Plaintiff Darryl Hidalgo is a citizen and resident of Cypress, Texas.
2. Defendant Nissan North America, Inc. is a Tennessee corporation with its principal place of business in Smyrna, Tennessee.
3. Defendant Nissan Motor Co., Ltd. is a Japanese corporation, with its principal place of business in Tokyo, Japan. Plaintiff will request waiver of formal service from this Defendant pursuant to FED. R. CIV. P. 4(d).

JURISDICTION AND VENUE

4. This Court has jurisdiction over this cause pursuant to 28 U.S.C. § 1331 in that Plaintiff's claims arise under the laws of the United States. Jurisdiction is also proper under 28 U.S.C. § 1332(d)(2)(A), as amended by Public Law 109-2, 199 Stat. 4 (2005), because the proposed

Class exceeds 100 members, the amount in controversy exceeds \$5 million, and all parties herein are residents of different states.

5. At all relevant times, Nissan had an agent or transacted business in the State of Michigan, including the Eastern District of Michigan. A substantial part of the conduct and omissions giving rise to the claims occurred in the Eastern District of Michigan. Venue, therefore, is proper in the Eastern District of Michigan pursuant to 28 U.S.C. § 1391(a).

FACTS

6. Defendant Nissan Motor Co., Ltd. and/or Defendant Nissan North America, Inc. design, manufacture, market, sell, lease and distribute motor vehicles to consumer and business customers in the United States and in the Eastern District of Michigan, under the brand name "Nissan."

7. On or about November 1, 2005 Plaintiff Darryl Hidalgo purchased a 2006 Nissan Frontier Crew Cab LE designed, manufactured and marketed by Nissan.

8. Plaintiff further acquired from Nissan basic warranties against all manufacturing defects for a period of three years or thirty-six thousand miles (the "Basic Warranty").

9. Defendant Nissan Motor Co., Ltd. and/or Defendant Nissan North America, Inc. further covenanted with Plaintiff that all genuine Nissan parts purchased from and installed by a Nissan dealer would be free of defects for not less than one year or twelve thousand miles (the "Parts Warranty").

10. The odometer is a system in all vehicles that measures the distance a vehicle travels. Manufacturers such as Defendants calibrate their vehicles' odometers. The accuracy of the odometer is affected by how precisely the manufacturer programs the software that records the mileage traveled by the vehicle.

11. According to an April 2002 NHTSA Report Number DOT 809 441, Preliminary Report: The Incidence Rate of Odometer Fraud, consumers pay a significant price for inaccurate odometers because a vehicle's odometer reading is a key indicator of the condition, and therefore the value of a vehicle.

12. In connection with the sale of the vehicles and their warranties, Defendant Nissan Motor Co., Ltd. and/or Defendant Nissan North America, Inc. impliedly represented to Plaintiff that the vehicle's odometer would accurately record the number of miles actually traveled by the vehicle.

13. On information and belief, Nissan purposefully designed its vehicles' odometers to inflate the mileage traveled by the vehicles by a factor of not less than two percent under normal conditions.

14. Nissan achieved this by programming its computerized odometers to over-register the actual mileage traveled.

15. Nissan set the odometers in its vehicles to register more miles than actually traveled as a part of a concerted effort to defraud the American consumer. It did not merely result from negligence or indifference.

16. Through this scheme, Nissan has deprived Plaintiff of the benefit of his bargain by effectively shortening his/her warranty and diminishing the resale value of his vehicle. Nissan's conduct, unless remedied, will ultimately deprive Plaintiff of more than seven hundred miles of his Basic Warranty protection, and shorten his Parts Warranties by as much as sixteen-hundred miles.

17. Likewise, Nissan's conduct has and will reduce the effective time period of each Class member's warranties over the lifetime of their vehicles, and daily decreases the market value of their vehicles.

18. Defendants were unjustly enriched in that they have collected and will collect charges for excessive mileage and other services to which they were not otherwise entitled, and have avoided warranty payments they should have made, while Plaintiff and other Class members were deprived of the full value of their leases and/or vehicle's value.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action on behalf of himself and all others similarly situated. Specifically, Plaintiff seeks to represent:

All persons and entities who/which purchased or leased a new Nissan automobile anywhere in the United States, from the date of the filing of the Complaint in this action through the date of final judgment.

The proposed class excludes counsel for the parties, the presiding United States District Court Judge, the Justices of the United States Court of Appeals for the Sixth Circuit and the United States Supreme Court, and all officers and directors of Defendants.

20. The Class consists of hundreds of thousands of Nissan owners and lessees located throughout Michigan and United States. While the exact number of Class members and the identities of individual Class members are unknown at this time, and can only be ascertained through appropriate discovery, the Class is nonetheless so numerous that joinder of all Class members is impracticable.

21. Questions of law and fact common to all Class members exist and predominate over any questions affecting only individual members. Such questions of law and fact common to the Class include, without limitation:

- a. Whether Nissan adopted a uniform odometer performance standard;
- b. Whether Nissan calibrated the performance of its odometers in violation of federal law;

- c. Whether the installation of the computer device causes errors of odometer over-registration;
- d. Whether such odometer over-registration was the result of Nissan's intent to defraud;
- e. The existence and measure of damages; and
- f. The availability of statutory penalties.

24. Plaintiff's claims, as described herein, are typical of the claims of all Class members, because the claims of Plaintiff and all Class members arise from the same set of facts. Each purchased or leased a Nissan vehicle containing an odometer which over-registers mileage. Plaintiff alleges that Nissan violated 49 U.S.C. § 32703 with the intent to defraud him and all Class members, and seeks damages, statutory penalties, and attorneys' fees and costs.

25. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not antagonistic to or in conflict with the interests of other Class members. Plaintiff has retained competent counsel experienced in the prosecution of class actions of this type.

26. Further, the prosecution of individual actions by hundreds of thousands of Nissan owners and lessees would unduly burden the courts and the litigants. Given the relatively small cost necessary to repair or replace the defective odometer and the relatively small amount of statutory damages available to each Class member, it is unreasonable to require or expect putative class members to litigate their claims individually. For these reasons, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

CAUSES OF ACTION

COUNT I

VIOLATION OF 49 U.S.C. §§ 32703(1)-(2)

27. Plaintiff incorporates and realleges paragraphs 1 through 26 above as though set forth herein.

28. The Federal Odometer Act, 49 U.S.C. §§ 32703(1)-(2) (the "Act"), in relevant part, makes it unlawful to:

- (1) [A]dvertise for sale, sell, use, install, or have installed, a device that makes an odometer of a motor vehicle register a mileage different from the mileage the vehicle was driven, as registered by the odometer within the designed tolerance of the manufacturer of the odometer;
- (2) [A]lter, or have disconnected, reset, or altered, an odometer of a motor vehicle intending to change the mileage registered by the odometer.

29. Nissan wrongfully manufactured, marketed, sold and leased vehicles with illegally calibrated odometers with the intent to defraud American consumers and deprive them of the benefit of their bargain.

30. Further, because Nissan engaged in the aforementioned conduct with the intent to defraud American consumers, Plaintiff and the Class are entitled to recover treble their actual damages together with reasonable attorneys' fees and all costs of court. 49 U.S.C. § 32710.

31. In the event that such actual damages are less than \$500 per vehicle, Plaintiff seeks for himself and the Class a statutory penalty of \$1,500 pursuant to 49 U.S.C. § 32710 for each such vehicle delivered in this country within two years prior to the date of filing of this complaint through the date of final judgment.

COUNT II

UNJUST ENRICHMENT/RESTITUTION

32. Plaintiff incorporates and realleges paragraphs 1 through 31 above as though set forth herein.

33. Defendants have been (and will continue to be) unjustly enriched by their wrongful acts to the financial detriment of Plaintiff and the Class members.

34. Defendants should be required to disgorge to Plaintiff and the Class members all ill-gotten benefits to which they were/are not entitled.

PRAYER FOR RELIEF

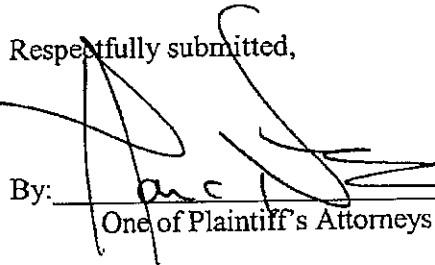
WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, respectfully requests the following relief:

- A. Certification of this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), and appointment of Plaintiff and his counsel to represent the Class;
- B. Entry of judgment in favor of Plaintiff and the Class, and against Defendants;
- C. Repair or replacement of all defective odometers;
- D. Disgorgement of all profits by which Defendants have been unjustly enriched;
- E. Actual damages;
- F. Treble damages or not less than \$1,500 for each class vehicle purchased in this country in the two years prior to the date of filing this complaint, pursuant to 49 U.S.C. § 32710(a).
- G. Attorneys' fees, expenses, and costs of this suit, pursuant to 49 U.S.C. § 32710(b);
- H. Post-judgment interest at the maximum rate allowed by law;
- I. Such other and further relief as the Court deems just and reasonable.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

By: 
One of Plaintiff's Attorneys

E. Powell Miller (P39487)
Marc L. Newman (P51393)
The Miller Law Firm, P.C.
950 W. University Drive, Suite 300
Rochester, Michigan 48307
(248) 841-2200
(248) 652-2852 facsimile
www.millerlawpc.com

John R. Wylie, Esq.
Charles R. Watkins, Esq.
FUTTERMAN HOWARD WATKINS WYLIE & ASHLEY, CHTD.
122 South Michigan Avenue, Suite 1850
Chicago, Illinois 60603
(312) 427-3600
(312) 427-1850 facsimile

Wyatt B. Durette, Esq.
Christopher G. Hill, Esq.
DURRETTE BRADSHAW PLC
Main Street Centre
Twentieth Floor
600 East Main Street
Richmond, Virginia 23219
(804) 775-6900
(804) 775-6911 facsimile